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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,550	08/25/2003	Richard W. Levine	15630/14	5227
26646	7590	07/09/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			ENGLISH, PETER C	
			ART UNIT	PAPER NUMBER
			3616	
DATE MAILED: 07/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/648,550

Applicant(s)

LEVINE, RICHARD W.

Examiner

Peter C. English

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 39-100 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-100 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20030825.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

1. The Information Disclosure Statement (IDS) filed on 25 February 2004 is a duplicate of the IDS filed on 25 August 2003. Therefore, only the IDS filed on 25 August 2003 has been considered.

### *Drawings*

2. The corrected drawing sheets 1-9 (containing Figs. 1A, 1B, 2, 3, 4, 5, 6, 7A, 7B and 8) filed on 25 August 2003 have been entered.

3. The corrected drawings filed on 25 August 2003 are objected to because:

In Fig. 4, the lead lines for the right-most and left-most occurrences of reference number 30 are not directed to the second pulley. Instead, these lead lines are directed to the first pin 26.

In Fig. 5, the solid-line representation of the upper extension 24 has been omitted (see Figs. 2 and 3).

Reference number 32 appears twice in Fig. 5, with the lead line for each occurrence directed to a different element. The right-hand occurrence of reference number 32 and its lead line should be deleted.

Fig. 5 includes reference number 62, which is mentioned in the specification in reference to a servo motor. No motor is shown in Fig. 5. Note that the structure within the channel member 42 represented by dashed lines in Fig. 5 is identical to that shown in Fig. 2. The Fig. 2 embodiment does not have a motor; it is adjusted manually using lever 12. The structure represented by dashed lines in Figs. 2 and 5 corresponds to the upper portion of the slide housing 18 which is received within the channel member 42 (see Fig. 4). Therefore, Fig. 5 should be amended to show a motor, or reference number 62 should be removed from the figure.

In black boxes 72 and 74 of Fig. 6, "SENSORS(S)" should be changed to "SENSOR(S)".

In Figs. 7A and 7B, reference number 28 and its lead line should be deleted.

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In Fig. 7A, the lower arrow (pointing to the left) should be removed since only the upper slide 102 moves in this embodiment.

In Fig. 7B, the upper arrow (pointing to the right) should be removed since only the lower slide 100 moves in this embodiment.

In Fig. 7B, the pull cable connector 120 should not be shown since this embodiment uses the push rod connector 118.

4. Corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### *Specification*

5. The substitute specification filed on 25 August 2003 has been entered.

#### *Claim Objections*

6. Claims 52-80 and 94-100 are objected to because:

Claim 52 merely repeats a limitation found in previous claim 50. No further limitation is added.

In claim 60, at line 2, "front-seat" should be "front seat". See line 4.

In claim 60, at line 4, "a front" should be "the front". See line 2.

In claim 72, at line 1, "claim71" should be "claim 71".

Claim 73 merely repeats a limitation found in previous claim 71. No further limitation is added.

Claim 94 merely repeats a limitation found in previous claim 86. No further limitation is added.

In claims 98-100, at line 3, "position" should be inserted after "clearance".

Appropriate correction is required.

#### *Claim Rejections - 35 USC § 112*

7. Claims 39-100 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claims 39 and 81, at line 8, "the minimum safe clearance position" lacks proper antecedent basis. The examiner suggests: at line 8, change the first occurrence of "the" to "a".

In claim 43, at lines 2-3, "the at least one pedal" is indefinite because a plurality of pedals is recited in previous claim 41. The examiner suggests that this be changed to "the plurality of pedals".

In claims 44, 55, 86 and 94, at lines 1-2, "the distance determining arrangement" lacks proper antecedent basis. The examiner suggests: at line 1, change "distance" to "position".

In claims 46, 57, 67, 78, 88 and 96, at line 1, "the front air-bag" lacks proper antecedent basis. The examiner suggests: at line 1, insert "arrangement" after "air-bag".

In claim 59, at lines 2-3, "the at least one pedal" is indefinite because a plurality of pedals is recited in previous claim 54. The examiner suggests that this be changed to "the plurality of pedals".

In claim 60, at line 3, "the front air-bag arrangement" lacks proper antecedent basis. The examiner suggests: at line 1, change "an" to "a front".

Claim 60 is indefinite because it only recites one method step and this single step does not define a "method of providing a minimum safe clearance distance..." (line 1). The examiner suggests: at line 15, begin a new paragraph after the word "and"; at line 15, insert "moving" before "the front seat"; and at line 15, delete "is movable".

In claim 80, at line 2, "the at least one pedal" is indefinite because a plurality of pedals is recited in previous claim 75. The examiner suggests that this be changed to "the plurality of pedals".

### ***Double Patenting***

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 39-100 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,293,584. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is well settled that a modification involving the mere omission of an element/limitation with the consequent loss of its function is within the level of ordinary skill in the art.

10. Claims 39-100 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,634,669. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is well settled that a modification involving the mere omission of an element/limitation with the consequent loss of its function is within the level of ordinary skill in the art.

#### ***Allowable Subject Matter***

11. Claims 39-100 would be allowable if: (1) these claims are rewritten or amended to overcome the rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action; and (2) a terminal disclaimer is filed to overcome the double patenting rejections.

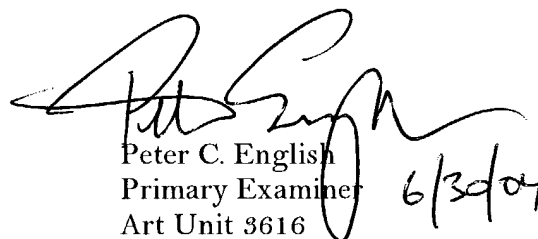
#### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter C. English whose telephone number is 703-308-1377. The examiner can normally be reached on Monday through Thursday (7:00 AM - 5:00 PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 703-308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Peter C. English  
Primary Examiner  
Art Unit 3616 6/30/04

pe  
30 June 2004